

**BEFORE THE ALASKA OFFICE OF ADMINISTRATIVE HEARINGS ON REFERRAL
BY THE COMMISSIONER OF HEALTH AND SOCIAL SERVICES**

In the Matter of)	
)	
U N)	OAH No. 19-0057-MDE
_____)	Agency No. 05957087

DECISION

I. Introduction

U N applied for Long Term Care services under the Home and Community-Based Services Medicaid Waiver program. Because Ms. N is legally married, the Division of Public Assistance requested additional information, including verification of her spouse’s resources and income. Ms. N did not submit the requested information, and the Division denied her application. Ms. N’s Power of Attorney, L T appealed.

Because Ms. N was legally married at the time of her application, her husband’s resources were countable for determining Ms. N’s eligibility for Waiver benefits. The Division properly requested the information concerning Mr. Q’s resources and income. The Division’s decision denying her application is AFFIRMED.¹

II. Facts

The facts in this case are not in dispute. Although separated for many years, U N is legally married to C Q.² Mr. Q moved to No Name in 2002 or 2003.³ Ms. N and Mr. Q have been estranged ever since.⁴ Ms. N was, however, dependent on Mr. Q for financial support, and Mr. Q sent her informal spousal support payments for several years.⁵ Initially, he sent about \$1,000 every three months, and then he started sending her \$1,200 every month.⁶ Those payments continued until about two years ago, when Mr. Q stopped sending any money or support.⁷

¹ Based on the information provided about Mr. Q’s believed resources, Ms. N’s countable income and resources would likely exceed the Medicaid Waiver income and resource limits.
² Testimony of S N; Testimony of L T; Ex. 3.
³ N Testimony.
⁴ N Testimony.
⁵ N Testimony; T Testimony; Testimony of H M; Ex. 3.
⁶ N Testimony; Ex. 3.
⁷ N Testimony; Ex. 3.

Since Mr. Q stopped sending money to Ms. N, she has struggled to make ends meet.⁸ Her home became dilapidated.⁹ At one point after a pipe under her house broke, she lived for an extended period with no running water.¹⁰

Ms. N is in poor health.¹¹ She has a bad aortic heart valve, and she frequently passes out.¹² She has a neurological issue, characterized by pain in the skin all over her body.¹³ She is blind and has problems with mobility.¹⁴ She recently fell and broke her hip.¹⁵ She has incontinence, requiring several changes of clothes each day.¹⁶ And she has been diagnosed with mild dementia.¹⁷ L T is Ms. N's Power of Attorney.¹⁸

Mr. Q filed for divorce in June 2018.¹⁹ The divorce proceedings are still pending, and a hearing is scheduled for June 2019.²⁰ Ms. N has been approved for legal assistance through Alaska Legal Services Corporation, but an attorney has not yet been assigned to help her with her divorce case.²¹ Though Mr. Q was ordered to provide financial documentation through the divorce proceedings, he has failed to do so.²² Ms. T has been unable to obtain financial information from Mr. Q.

Ms. T applied for Long Term Care services under the Home and Community-Based Services Medicaid Waiver program (Waiver) for Ms. N on November 5, 2018.²³ Ms. T submitted several pages of information about Ms. N's income and resources with the application.²⁴ Ms. T did not provide any information about Mr. Q's income or resources.²⁵

On November 8, 2018, the Division held an interview with Ms. T, Ms. T's partner, H M, and Ms. N's Care Coordinator, M E.²⁶ During the interview, Ms. T confirmed that Ms. N and Mr. Q are still legally married; that they have been separated for about 18 years; and divorce proceedings are

⁸ N Testimony.
⁹ N Testimony.
¹⁰ N Testimony.
¹¹ N Testimony; T Testimony; M Testimony.
¹² N Testimony; T Testimony; M Testimony.
¹³ N Testimony; T Testimony; M Testimony.
¹⁴ N Testimony; T Testimony; M Testimony.
¹⁵ N Testimony; T Testimony; M Testimony.
¹⁶ N Testimony; T Testimony; M Testimony.
¹⁷ N Testimony; T Testimony; M Testimony.
¹⁸ Ex. 2.11 – 2.14.
¹⁹ T Testimony; Ex. 3.
²⁰ T Testimony.
²¹ N Testimony; Ex. 3.
²² T Testimony.
²³ Ex. 2.
²⁴ Ex. 2.1 – 2.72.
²⁵ Ex. 2.1 – 2.72.
²⁶ Ex. 3.

pending.²⁷ Ms. T reported that Ms. N has very limited information about Mr. Q's income and resources, and that Mr. Q has yet to provide any information to the Alaska courts.²⁸ To the best of Ms. N's knowledge, Mr. Q is a Chief Engineer for Trident Seafoods.²⁹ She does not know how much he earns in that job.³⁰ Mr. Q reportedly has a 401K retirement account with a balance of \$350,000 to \$400,000; and stocks and bonds worth \$400,000 to \$600,000.³¹ He reportedly received two inheritances valued over \$1 million within the past 10 years.³² Ms. T does not know whether Mr. Q owns any land, homes, life insurance policies, vehicles, or other assets.³³ Nor does she know whether he has sold, transferred, or given away any assets in the previous five years.³⁴

On November 9, 2018, the Division sent Ms. N notice that her Waiver application was put on hold pending additional information.³⁵ In addition to copies of bank statements for Ms. N's accounts, on November 28, 2019, the Division asked Ms. N to provide the following information about Mr. Q's income and resources: (1) copies of all statements showing a balance as of November 1, 2018 and all transactions, including deposits, withdrawals and daily balances going back to August 1, 2018 for all checking, savings, money market, certificate of deposit, or other types of accounts; (2) verification of the balance or value from August 1, 2018 to November 1, 2018 for any investment or retirement accounts (i.e. 401K, IRA, stock portfolio, etc.); (3) verification and information about any land or homes, including an address or description, the tax assessed value, and the amount owed, if any; (4) verification of any life insurance policies, including face and cash surrender value as of November 1, 2018; (5) verification of the value of any stocks or bonds from August 1, 2018 to November 1, 2018; and (6) a detailed list, including year, make, model, fair market value, and amount owed for any vehicles titled in Mr. Q's name.³⁶ The Division gave Ms. N until December 13, 2018 to provide the requested information, warning that if the information was not received by that date, her request for Waiver services would be denied.³⁷

²⁷ Ex. 3.
²⁸ Ex. 3.
²⁹ N Testimony.
³⁰ N Testimony; Ex. 3.2.
³¹ N Testimony; Ex. 3.
³² N Testimony; Ex. 3.
³³ T Testimony; Ex. 3.
³⁴ Ex. 3.2.
³⁵ Ex. 4 – 4.1.
³⁶ Ex. 5; Ex. 6.
³⁷ Ex. 6.

On December 10, 2018, Ms. T provided some of the requested information, including Ms. N's bank statements and documentation for sale of properties.³⁸ Ms. T did not, however, provide information about or documentation for Mr. Q's income and resources.

On December 17, 2018, the Division denied Ms. N's application because she did not provide verification of all of Mr. Q's resources.³⁹ The following day, Ms. T requested an extension to obtain Mr. Q's financial information.⁴⁰ Ms. T asked the Division to contact Mr. Q directly to demand his financial records.⁴¹ Because the application had already been denied, the Division did not grant the request for an extension.⁴² Nor did the Division contact Mr. Q directly to obtain the needed information.⁴³ The Division can in some cases independently obtain financial information, but it can only do so with a signed release.⁴⁴ The Division does not contact individuals who are not applicants or authorized representatives for information on a pending application.⁴⁵ In this case, Mr. Q was not an applicant, and the Division does not have a release allowing it to independently obtain Mr. Q's financial information.⁴⁶

Ms. T challenged the Division's denial and requested a fair hearing.⁴⁷ In her fair hearing request, Ms. T argued that Ms. N and Mr. Q have been separated for over 18 years.⁴⁸

A telephonic hearing was held on February 6, 2019. The Division's hearing representative, Sally Dial, represented and testified on behalf of the Division. Ms. N, who was represented by Ms. T, participated and testified on her own behalf. Ms. T, Ms. T's partner, H M, and Ms. N's Care Coordinator, Julia Lutz also testified on Ms. N's behalf. All exhibits were admitted without objection.

Ms. N does not dispute any of the facts. Instead, she argues that Mr. Q abandoned her, leaving her destitute, and she disagrees with the Division's requirement to provide a spouse's income and resource information when the couple is separated.

III. Discussion

³⁸ Ex. 7.

³⁹ Ex. 9.3; Ex. 11.

⁴⁰ Ex. 10.

⁴¹ Ex. 10.

⁴² Testimony of Sally Dial.

⁴³ Dial Testimony.

⁴⁴ Dial Testimony.

⁴⁵ Dial Testimony.

⁴⁶ Dial Testimony.

⁴⁷ Ex. 11.1.

⁴⁸ Ex. 11.1.

The issue in this case is whether the Division was correct to deny Ms. N’s application for Waiver services when Ms. N failed to provide her spouse’s income and resources even though Ms. N and Mr. Q had been separated for many years.

Unlike APA Medicaid, which Ms. N can apply for without consideration of Mr. Q’s financial information, “all countable resources owned by one or both spouses are combined as of the date the applicant entered a medical institution or was approved under 7 AAC 130.205 – 7 AAC 130.219 for home and community-based waiver services.”⁴⁹ This is so regardless of whether the spouses live together or are separated.⁵⁰ Although separated, Ms. N and Mr. Q were still legally married when Ms. N moved to an assisted living home and when she applied for Waiver services. Even though Mr. Q reportedly abandoned Ms. N, as long as Ms. N and Mr. Q remain legally married, Mr. Q’s income and resources are countable for determining Ms. N’s eligibility.

The Medicaid program allows the Division to request information about an applicant’s eligibility for benefits.⁵¹ If the Division determines that it needs further documentation to determine eligibility, it must send notice requesting the additional documentation, and the notice must give the applicant at least 10 days to respond.⁵² If the applicant does not provide the Division with the information necessary to calculate eligibility, the Division may deny the benefits.⁵³

Because a spouse’s income and resources are countable when determining a Waiver applicant’s eligibility—even when those spouses are separated—the Division was correct when it requested the information concerning Mr. Q’s income and resources.⁵⁴ The Division met its notification requirement by sending the notification on November 28, 2018 with a request for additional information about Mr. Q’s income and resources by December 13, 2018.⁵⁵ As the notice says, the Division may deny benefits due to failure to provide verification of Mr. Q’s resources and income.⁵⁶

Although the result in this case is harsh, the Division correctly applied its regulations. Ms. N has not provided the necessary documents or information to determine her eligibility for Waiver services. Unfortunately, neither the Division nor OAH has the authority to demand or compel Mr. Q to submit the financial information needed in this case. To the extent Mr. Q abandoned Ms. N and failed to cooperate

⁴⁹ 7 AAC 100.506(b).

⁵⁰ 7 AAC 100.519(11).

⁵¹ 7 AAC 100.016(a).

⁵² 7 AAC 100.022(a).

⁵³ 7 AAC 100.016(b).

⁵⁴ 7 AAC 100.506(b).

⁵⁵ Ex. 5; Ex. 6.

⁵⁶ 7 AAC 100.016(b); Ex. 6.

with court orders requiring him to submit financial information, Ms. N's recourse is through the divorce proceedings. Accordingly, the Division's decision is affirmed.

IV. Conclusion

Because U N and C Q were legally married at the time of Ms. N's application, Mr. Q's resources were countable for determining Ms. N's eligibility for Waiver benefits. The Division properly requested the information concerning Mr. Q's resources and income. The Division's decision denying Ms. N's application is AFFIRMED.

Dated: February 8, 2019

By: Signed
Signature
Jessica L. Leeah
Name
Administrative Law Judge
Title

[This document has been modified to conform to the technical standards for publication. Names may have been changed to protect privacy.]

Adoption

The undersigned, by delegation from the Commissioner of Health and Social Services, adopts this Decision, under the authority of AS 44.64.060(e)(1), as the final administrative determination in this matter.

Judicial review of this decision may be obtained by filing an appeal in the Alaska Superior Court in accordance with Alaska R. App. P. 602(a)(2) within 30 days after the date of this decision.

DATED this 25th day of February, 2019.

By: Signed
Signature
Jessica L. Leeah
Name
Administrative Law Judge
Title

[This document has been modified to conform to the technical standards for publication. Names may have been changed to protect privacy.]